

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAMONT WILLIAM PAPAKEE and  
CONNIE FRANCES BLACKCLOUD,

Defendants.

No. 06-CR-162-LRR

**FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

**INSTRUCTION NUMBER 1**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

**INSTRUCTION NUMBER 2**

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

**INSTRUCTION NUMBER 3**

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

## INSTRUCTION NUMBER 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the stipulations of the parties and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

## INSTRUCTION NUMBER 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

**INSTRUCTION NUMBER** 12

As you know, there are two defendants on trial here: LaMont William Papakee and Connie Frances Blackcloud. Each defendant is entitled to have his or her case decided solely on the evidence which applies to him or her.

## INSTRUCTION NUMBER 7

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness, who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.



**INSTRUCTION NUMBER 8**

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

INSTRUCTION NUMBER 9

The government and the defendants have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must, therefore, treat those facts as having been proved.

INSTRUCTION NUMBER 10

You have heard testimony that the defendants made statements to others in this case.

It is for you to decide:

- (1) whether the defendant in question made the statements and
- (2) if so, how much weight you should give to them.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.

**INSTRUCTION NUMBER 11**

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

## INSTRUCTION NUMBER 12

The Indictment in this case charges that the defendants committed sexual abuse crimes (Counts 1 and 2). Each defendant has pleaded not guilty to each crime with which he or she is charged.

As I told you at the beginning of trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, each defendant is presumed to be innocent. Thus each defendant, even though charged, begins the trial with no evidence against him or her. So the presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crime charged.

Keep in mind that you must give separate consideration to the evidence about each individual defendant. Each defendant is entitled to be treated separately, and you must return a separate verdict for each defendant. Also keep in mind that you must consider, separately, each crime charged against each individual defendant, and must return a separate verdict for each of those crimes charged.

There is no burden upon a defendant to prove that he or she is innocent.

Accordingly, the fact that the defendants did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

## INSTRUCTION NUMBER 13

Count 1 of the Indictment charges each defendant with aggravated sexual abuse. There are four alternatives for conviction under Count 1: (1) aggravated sexual abuse; (2) attempted aggravated sexual abuse; (3) aiding and abetting aggravated sexual abuse; and (4) aiding and abetting attempted aggravated sexual abuse. It would be sufficient if the government proves, beyond a reasonable doubt, *one* of these alternatives. However, in that event, in order to return a verdict of guilty, you must unanimously agree upon *which* one or more of the alternatives under which to convict.

The offense of aggravated sexual abuse has four essential elements, which are:

- One,* on or about September 6, 2006, the defendant under consideration by you knowingly caused a female to engage in a sexual act;
- Two,* the defendant under consideration by you caused such female to engage in said sexual act by the use of force;
- Three,* the defendant under consideration by you is an Indian; and
- Four,* the offense took place in Indian Country, namely on the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement.

A person may also be found guilty of aggravated sexual abuse as charged in Count 1 of the Indictment, if he or she attempted to commit aggravated sexual abuse. The offense of attempted aggravated sexual abuse has two essential elements, which are:

- One,* the defendant under consideration by you intended to commit aggravated sexual abuse; and
- Two,* the defendant under consideration by you voluntarily carried out some act which was a substantial step toward aggravated sexual abuse.

(CONTINUED)

INSTRUCTION NUMBER 13 (Cont'd)

A substantial step must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to commit the criminal conduct alleged in Count 1 of the Indictment.

A person may also be found guilty of aggravated sexual abuse, as charged in Count 1 of the Indictment, even if he or she personally did not do every act constituting the offense charged, if he or she aided and abetted the commission of aggravated sexual abuse or the commission of attempted aggravated sexual abuse.

In order to have aided and abetted the commission of a crime a person must:

- (1) Have known the crime was being committed or going to be committed; and
- (2) Have knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of the crime.

For you to find the defendant under consideration by you guilty of aggravated sexual abuse or attempted aggravated sexual abuse by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of aggravated sexual abuse or attempted aggravated sexual abuse were committed by some person or persons and that the defendant under consideration by you aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is

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**INSTRUCTION NUMBER 13 (Cont'd)**

being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of the essential elements have been proved beyond a reasonable doubt as to the defendant under consideration by you, then you must find the defendant guilty of Count 1, otherwise you must find the defendant under consideration by you not guilty of Count 1.



INSTRUCTION NUMBER 14

Count 2 of the Indictment charges each defendant with sexual abuse. There are four alternatives for conviction under Count 2: (1) sexual abuse; (2) attempted sexual abuse; (3) aiding and abetting sexual abuse; and (4) aiding and abetting attempted sexual abuse. It would be sufficient if the government proves, beyond a reasonable doubt, *one* of these alternatives. However, in that event, in order to return a verdict of guilty, you must unanimously agree upon *which* one or more of the alternatives under which to convict.

The offense of sexual abuse has four essential elements, which are:

- One,*           on or about September 6, 2006, the defendant under consideration by you knowingly engaged in a sexual act with another person;
  
- Two,*           the other person was:
  - (a)   incapable of appraising the nature of the conduct;
  - (b)   physically incapable of declining participation in the sexual act; or
  - (c)   physically incapable of communicating unwillingness to engage in the sexual act;
  
- Three,*       the defendant under consideration by you is an Indian; and
  
- Four,*       the offense took place in Indian Country, namely on the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement.

A person may also be found guilty of sexual abuse, as charged in Count 2 of the Indictment, if he or she attempted to commit sexual abuse. The offense of attempted sexual abuse has two essential elements, which are:

- One,*           the defendant under consideration by you intended to commit sexual abuse; and

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INSTRUCTION NUMBER 14 (Cont'd)

Two, the defendant under consideration by you voluntarily carried out some act which was a substantial step toward sexual abuse.

A substantial step must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to commit the criminal conduct alleged in Count 2 of the Indictment.

A person may also be found guilty of sexual abuse, as charged in Count 2 of the Indictment even if he or she personally did not do every act constituting the offense charged, if he or she aided and abetted the commission of sexual abuse or the commission of attempted sexual abuse.

In order to have aided and abetted the commission of a crime a person must:

- (1) Have known the crime was being committed or going to be committed; and
- (2) Have knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of the crime.

For you to find the defendant under consideration by you guilty of sexual abuse or attempted sexual abuse by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of sexual abuse or attempted sexual abuse were committed by some person or persons and that the defendant under consideration by you aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a

(CONTINUED)

**INSTRUCTION NUMBER 14 (Cont'd)**

person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of the essential elements have been proved beyond a reasonable doubt as to the defendant under consideration by you, then you must find the defendant guilty of Count 2, otherwise you must find the defendant under consideration by you not guilty of Count 2.

INSTRUCTION NUMBER 15

The parties have stipulated that the Defendants are Indians for purposes of Counts 1 and 2.

The parties have stipulated that the Defendants are Indians for purposes of Counts 1 and 2.

**INSTRUCTION NUMBER 16**

The government must prove the alleged assault took place in Indian Country. I instruct you now that the Settlement, namely on the Sac and Fox Tribe of the Mississippi in Iowa Meskwaki Settlement, including 315 Red Earth Drive, Tama County, Iowa, is in Indian Country. Therefore, if you find beyond a reasonable doubt that the actions alleged occurred at 315 Red Earth Drive, Tama County, Iowa, this element of each of the charged offenses has been met.

INSTRUCTION NUMBER 17

A "sexual act" as used in Counts 1 and 2 of the Indictment means the penetration, however slight, of the genital opening of another by any object with the intent to abuse, humiliate, harass, degrade, arouse the sexual desire of, or gratify the sexual desire of any person.

**INSTRUCTION NUMBER 18**

The element of force, as alleged in Count 1 of the Indictment, is established if the defendant under consideration by you overcame, restrained, or injured the victim.

INSTRUCTION NUMBER 19

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what either defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.



**INSTRUCTION NUMBER 20**

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**INSTRUCTION NUMBER 21**

An act is done "knowingly" if the defendant under consideration by you realized what he or she was doing and did not act through ignorance, mistake or accident. The government is not required to prove that either defendant knew that his or her acts or omissions were unlawful. You may consider the evidence of each defendant's acts and words, along with all other evidence, in deciding whether such defendant acted knowingly.

**INSTRUCTION NUMBER 22**

You will note the Indictment charges that the offenses were committed "on or about" a certain date. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER 23

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

## INSTRUCTION NUMBER 24

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

*Third*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

*Fourth*, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

*Finally*, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NUMBER 25

Attached to these instructions you will find four Verdict Forms. These Verdict Forms are simply the written notice of the decisions that you reach in this case. The answers to these Verdict Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Forms, your foreperson will fill out the Verdict Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

June 27, 2007  
DATE

  
LINDA R. READE  
CHIEF JUDGE, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAMONT WILLIAM PAPAKEE

Defendant.

No. 06-CR-162-LRR

**VERDICT FORM**

We, the Jury, unanimously find, the defendant, LaMont William Papakee,  
\_\_\_\_\_ of the crime charged in Count 1 of the Indictment.

Not Guilty / Guilty

Note: If you unanimously find the defendant, LaMont William Papakee, not guilty of Count 1, have your foreperson write "not guilty" in the above blank space, and sign and date this Verdict Form. Then, go on to answer the next Verdict Form.

If you unanimously and beyond a reasonable doubt find the defendant, LaMont William Papakee, guilty of Count 1, have your foreperson write "guilty" in the above blank space, then sign and date this Verdict Form and go on to answer the next Verdict Form.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CONNIE FRANCES BLACKCLOUD

Defendant.

No. 06-CR-162-LRR

**VERDICT FORM**

We, the Jury, unanimously find, the defendant, Connie Frances Blackcloud,  
\_\_\_\_\_ of the crime charged in Count 1 of the Indictment.

Not Guilty / Guilty

Note: If you unanimously find the defendant, Connie Frances Blackcloud, not guilty of Count 1, have your foreperson write "not guilty" in the above blank space, and sign and date this Verdict Form. Then, go on to answer the next Verdict Form.

If you unanimously and beyond a reasonable doubt find the defendant, Connie Frances Blackcloud, guilty of Count 1, have your foreperson write "guilty" in the above blank space, then sign and date this Verdict Form and go on to answer the next Verdict Form.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAMONT WILLIAM PAPAKEE

Defendant.

No. 06-CR-162-LRR

**VERDICT FORM**

We, the Jury, unanimously find, the defendant, LaMont William Papakee,  
\_\_\_\_\_ of the crime charged in Count 2 of the Indictment.

Not Guilty / Guilty

Note: If you unanimously find the defendant, LaMont William Papakee, not guilty of Count 2, have your foreperson write "not guilty" in the above blank space, and sign and date this Verdict Form. Then, go on to answer the next Verdict Form.

If you unanimously and beyond a reasonable doubt find the defendant, LaMont William Papakee, guilty of Count 2, have your foreperson write "guilty" in the above blank space, then sign and date this Verdict Form and go on to answer the next Verdict Form.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CONNIE FRANCES BLACKCLOUD

Defendant.

No. 06-CR-162-LRR

**VERDICT FORM**

We, the Jury, unanimously find, the defendant, Connie Frances Blackcloud,  
\_\_\_\_\_ of the crime charged in Count 2 of the Indictment.

Not Guilty / Guilty

Note: If you unanimously find the defendant, Connie Frances Blackcloud, not guilty of Count 2, have your foreperson write "not guilty" in the above blank space, and sign and date this Verdict Form.

If you unanimously and beyond a reasonable doubt find the defendant, Connie Frances Blackcloud, guilty of Count 2, have your foreperson write "guilty" in the above blank space, then sign and date this Verdict Form.

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE